IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.01.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE N. PAUL VASANTHAKUMAR

WRIT APPEAL NO.3105 OF 2003

Supervisors Union
(Regn.No.1022/TRI)
rep. by its President
Bharat Heavy Electricals Ltd.,
Trichy 620 014. .. Appellant/Petitioner

vs.

1. The Presiding Officer
   The Industrial Tribunal
   Madras.

2. The Management of BHEL
   Thiruvarambur
   Trichy 620 014. .. Respondents/Respondents

Writ appeal filed under Clause 15 of the Letters Patent against the order of this Court made in W.P.No.16221 of 1995 dated 21.07.2003 writ petition presented under Article 226 of the constitution of India to issue a writ of Certiorarified Mandamus to call for the records from the 1st respondent, Industrial Tribunal, Madras relating to I.D.No.63/91 on its filed quash the Award dt. 24.8.1994 in I.D.No.63/91 filed and marked as Ex.'A' and issue a consequential Mandamus directing the 2nd respondent to concede the demand of the workmen that the post of HPW. Gr.'A'.should be redesignated as Asst. Foreman from the date on which they stand promoted as Chargeman and work out the arrears and consequential promotions on that basis award costs.

For appellant : Mr. N.G.R. Prasad
for M/s. Row and Reddy

For 2nd respondent: Mr. Sanjay Mohan
for M/s. Ramasubramaniam Associates

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JUDGMENT

(Judgment of the Court delivered by P.SATHASIVAM,J.)

Supervisors Union of Bharat Heavy Electricals Limited, Trichy, aggrieved by the order of learned Single Judge dated 21.7.2003 made in W.P.No.16221 of 1995, has filed the above writ appeal.

2. Heard Mr.N.G.R.Prasad, learned counsel appearing for the appellant herein and Mr.Sanjay Mohan, learned counsel appearing for the second respondent/Management.

3. For convenience, we shall refer the parties as arrayed in the writ petition.

4. According to the petitioner, the second respondent -management have got High Pressure Boiler plants at Trichy, Hyderabad and other places. There are two channels of promotion from Welder Grade-I which is the basic grade; one is Supervisory Channel and the other is Workmen Channel. The present dispute relates to Workmen Channel, viz., High Pressure Welder Grade-A, who are working in Trichy Unit. In Workmen Channel, workmen in Welder Grade-I have to pass the Specialised Test prescribed by the Indian Boiler Regulations (IBR) and obtain certificate in Carbon Steel High Pressure Tube Pipe Welding for promotion to High Pressure Welder Grade-B in the scale, Rs.800 - 1345 (pre-revised) which corresponds to Chargemen Grade in Supervisor Channel. There are also direct recruitees to High Pressure Welder Grades B and A. If a High Pressure Welder Grade-B gets a certificate in Alloy Steel, he will be promoted as High Pressure Welder Grade-A carrying the scale of pay, Rs.880 - 1492 (pre-revised) which corresponds to Assistant Foreman Category in Supervisory Channel. Then, High Pressure Welder Grade-A will be sent for Supervisory Training and thereafter, he will be promoted as Chargeman which carries the lower scale of pay, Rs.800 - 1345 in Supervisory Channel. In such circumstance, though the pay is protected, the amount of increment will get reduced considerably.

5. It is further stated that in Supervisory Channel, a Welder Grade-I, on completion of six years, gets promoted as Chargeman in the scale of pay, Rs.800 - 1345 without passing any test. On completion of five years as Chargeman, he gets promoted as Assistant Foreman. The Supervisors Union demanded that Welders in Workman Channel who are promoted as High Pressure Welder Grade-B and Grade-A after several tests should be redesignated as Assistant Foreman and promoted in Supervisory Channel, because of the anomaly that High Pressure Welder Grade-A carrying scale of pay, Rs.800 - 1492, after Supervisory Training, would be promoted as Chargeman carrying lower

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scale of pay, Rs.800 - 1345. Therefore, it is the plea of the Supervisors Union that instead of promoting High Pressure Welder Grade-A as Chargeman which carries lower scale of pay and allowing him to draw the same pay, he may be redesignated at least as Assistant Foreman which carries the same scale as that of High Pressure Welder Grade-A so as to get further promotions. In fact, the case of the petitioner is that when High Pressure Welder Grade-A is given the post of Chargeman, it is not at all a promotion because it carries a lower scale of pay.

6. It is also stated that in Hyderabad unit, High Pressure Welder Grade-A has been redesignated as Assistant Foreman which is evident from the Office Orders dated 6.3.1978 and 28.9.1979. Similarly, when a Photographer Grade III is promoted as Photographer II in the scale of pay, Rs.880 - 1492, which is a non-supervisory Post, he is redesignated and given the scale of pay similar to that of Supervisory Post, Media Assistant Grade II and it is clear from the order dated 7.1.1985. Therefore the Supervisors Union demanded that Workmen in High Pressure Welder Grade-A should be redesignated as Assistant Foreman from the date on which they stand promoted as Chargeman and the scale of pay of Chargeman Rs.800 - 1345 which is a lower scale should not be fixed.

7. The Government of Tamil Nadu, by G.O.(D) No.976, Labor and Employment Department, dated 3.10.1991 referred the dispute to the Industrial Tribunal. According to the petitioner, the Tribunal, without considering any of the contentions raised by the petitioner Union, passed an award upholding the action of the management.

8. In the writ petition filed against the award of the Tribunal, the learned Judge, though arrived at a conclusion that the Tribunal could have bestowed more attention to the factual details, dismissed the writ petition without adverting to all relevant materials except referring to the order made in W.P.No.10441 of 1984. Hence, the present writ appeal by the petitioner Union.

9. Mr.N.G.R.Prasad, learned counsel for the petitioner vehemently contended that when several details have been furnished and oral and documentary evidence have also been placed, it is but proper for the Tribunal to discuss and render a specific finding in the reference made by the Government. He also pointed out that except referring to the earlier order of this Court, learned Single Judge has not considered the merit of the claim made by the petitioner Union.

10. Mr.Sanjay Mohan, learned counsel for the respondent/management, by taking us through various factual details in the counter affidavit filed before the learned Single Judge, contended that though the Tribunal had not discussed the issue in

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detail, the decision arrived at by it cannot be faulted with.

11. In view of the contentions made on both sides, we verified the order of reference, the details found in the claim statement, the stand taken by the management, the materials placed before the Tribunal and the order of the Tribunal as well as the order of the learned Single Judge.

12. The order of reference made by the Government reads as under:

> "Whether the demand of the workmen that the post of High Pressure Welder Grade-A should be redesignated as Assistant Foreman from the date on which they stand promoted as Chargemen is justified; if not, to what relief, they are entitled?"

With reference to the same, the petitioner Union apart from highlighting their stand in the claim petition, also examined one A.K.Karthikeyan as W.W.1 and marked documents, Exs.W-1 to W-15 in support of their claim. On the side of management one S.Ramalingam was examined as M.W.1 and Exs.M-1 to M-10 were marked in support of their stand.

13. In view of the limited contention raised by Mr.N.G.R.Prasad, learned counsel, we verified the order of the Tribunal. As rightly contended by Mr.N.G.R.Prasad and not seriously disputed by the contesting respondent, the Tribunal has not adverted to all the relevant details when both the petitioner Union and the management furnished relevant details. The learned Judge, when it was brought to his notice, has also not considered the same. We are satisfied that the Tribunal apart from extracting the claim statement and the counter statement of respective parties, did not adjudicate the issue. In so far as the reference to earlier judgment in W.A.No.528 of 1985, which arose out of order in W.P.No.10441 of 1984, is concerned, it is pointed out that the issue in that writ appeal was whether the senior artisans who were in non-supervisory category were entitled to promotion to supervisory category merely because they worked in that post. In view of the same, we are of the view that it is but proper on the part of the learned Judge to go into the merits and find out whether the claim of the petitioner Union is justifiable. It is seen that the members of petitioner Union belong to supervisory category and the question is whether on promotion as High Pressure Welder Grade-A, the members of the petitioner Union are entitled to be redesignated as Assistant Foreman in the scale of pay, Rs.880-1492. The Tribunal as well as the learned Judge did not advert to the said issue.

14. Further, Mr.N.G.R.Prasad, learned counsel has brought to our

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notice that in Hyderabad Unit the employees in High Pressure Welder Grade-A were redesignated as Assistant Foreman. It is contended that by parity of reasoning, it ought to have been held that High Pressure Welder Grade-A, Trichy Unit are entitled to redesignation as Assistant Foreman. It is further argued that the denial of the said redesignation to the petitioner Union is in violation of Article 16 of the Constitution of India. We are satisfied that none of the above mentioned aspects were considered by the Tribunal as well as by the learned Judge. Under those circumstances, without going into the merits of the stand taken by the petitioner Union as well as the management, we set aside the order of the Tribunal as well as the learned Single Judge and remit the matter back to the Tribunal for fresh disposal in accordance with law. It is made clear that in view of our above decision, we are not expressing any opinion, even though both the Union and the management highlighted their respective stands in the affidavit and the counter affidavit, and it is for the Tribunal to consider the same afresh. The Tribunal is directed to restore I.D.No.63 of 1991 on its file and dispose of the same on merits as directed above within a period of four months from the date of receipt of copy of this order, after affording opportunity to both the parties.

The writ appeal is allowed on the above terms. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Industrial Tribunal
   Madras. (with records)

2.The Sub Asst. Registrar,
Writ Section, High Court, Madras.

+1cc to Govt. Pleader Sr 3577
+1cc to M/s.Row & Reddy, Advocate Sr 3491

AVA (CO)
km/25.1.

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